

§ 2562 and amended Pub. L. 106-398, § 1 [[div. A], title X, § 1033(b)(1), (c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A-260; Pub. L. 107-217, § 3(b)(8), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 107-314, div. A, title X, § 1062(e)(1), Dec. 2, 2002, 116 Stat. 2651; Pub. L. 111-350, § 5(b)(41), Jan. 4, 2011, 124 Stat. 3846, related to the limitation on use of excess construction or fire equipment from Department of Defense stocks in foreign assistance or military sales programs.

§ 2563. Articles and services of industrial facilities: sale to persons outside the Department of Defense

(a) **AUTHORITY TO SELL OUTSIDE DOD.**—(1) The Secretary of Defense may sell in accordance with this section to a person outside the Department of Defense articles and services referred to in paragraph (2) that are not available from any United States commercial source.

(2)(A) Except as provided in subparagraph (B), articles and services referred to in paragraph (1) are articles and services that are manufactured or performed by any working-capital funded industrial facility of the armed forces.

(B) The authority in this section does not apply to sales of articles and services by a working-capital funded Army industrial facility (including a Department of the Army arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof, which are governed by regulations required by section 7543 of this title.

(b) **DESIGNATION OF PARTICIPATING INDUSTRIAL FACILITIES.**—The Secretary may designate facilities referred to in subsection (a) as the facilities from which articles and services manufactured or performed by such facilities may be sold under this section.

(c) **CONDITIONS FOR SALES.**—(1) A sale of articles or services may be made under this section only if—

(A) the Secretary of Defense determines that the articles or services are not available from a commercial source in the United States;

(B) the purchaser agrees to hold harmless and indemnify the United States, except as provided in paragraph (3), from any claim for damages or injury to any person or property arising out of the articles or services;

(C) the articles or services can be substantially manufactured or performed by the industrial facility concerned with only incidental subcontracting;

(D) it is in the public interest to manufacture the articles or perform the services;

(E) the Secretary determines that the sale of the articles or services will not interfere with the military mission of the industrial facility concerned; and

(F) the sale of the goods and services is made on the basis that it will not interfere with performance of work by the industrial facility concerned for the Department of Defense.

(2) The Secretary of Defense may waive the condition in paragraph (1)(A) and subsection (a)(1) that an article or service must be not available from a United States commercial source in the case of a particular sale if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.

(3) Paragraph (1)(B) does not apply in any case of willful misconduct or gross negligence or in the case of a claim by a purchaser of articles or services under this section that damages or injury arose from the failure of the Government to comply with quality, schedule, or cost performance requirements in the contract to provide the articles or services.

(d) **METHODS OF SALE.**—(1) The Secretary shall permit a purchaser of articles or services under this section to use advance incremental funding to pay for the articles or services.

(2) In the sale of articles and services under this section, the Secretary shall—

(A) charge the purchaser, at a minimum, the variable costs, capital improvement costs, and equipment depreciation costs that are associated with the articles or services sold;

(B) enter into a firm, fixed-price contract or, if agreed by the purchaser, a cost reimbursement contract for the sale; and

(C) develop and maintain (from sources other than appropriated funds) working capital to be available for paying design costs, planning costs, procurement costs, and other costs associated with the articles or services sold.

(e) **DEPOSIT OF PROCEEDS.**—Proceeds from sales of articles and services under this section shall be credited to the funds, including working capital funds and operation and maintenance funds, incurring the costs of manufacture or performance.

(f) **RELATIONSHIP TO ARMS EXPORT CONTROL ACT.**—Nothing in this section shall be construed to affect the application of the export controls provided for in section 38 of the Arms Export Control Act (22 U.S.C. 2778) to items which incorporate or are produced through the use of an article sold under this section.

(g) **DEFINITIONS.**—In this section:

(1) The term “advance incremental funding”, with respect to a sale of articles or services, means a series of partial payments for the articles or services that includes—

(A) one or more partial payments before the commencement of work or the incurring of costs in connection with the manufacture of the articles or the performance of the services, as the case may be; and

(B) subsequent progress payments that result in full payment being completed as the required work is being completed.

(2) The term “not available”, with respect to an article or service proposed to be sold under this section, means that the article or service is unavailable from a commercial source in the required quantity and quality or within the time required.

(3) The term “variable costs”, with respect to sales of articles or services, means the costs that are expected to fluctuate directly with the volume of sales and—

(A) in the case of articles, the volume of production necessary to satisfy the sales orders; or

(B) in the case of services, the extent of the services sold.

(Added Pub. L. 103-337, div. A, title III, § 339(a)(1), Oct. 5, 1994, 108 Stat. 2718, § 2553;

amended Pub. L. 106-65, div. A, title III, § 331(a)(2), (b), Oct. 5, 1999, 113 Stat. 566, 567; renumbered § 2563, Pub. L. 106-398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-260; Pub. L. 107-107, div. A, title III, § 343(a), Dec. 28, 2001, 115 Stat. 1061; Pub. L. 115-232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840.)

Editorial Notes

AMENDMENTS

2018—Subsec. (a)(2)(B). Pub. L. 115-232 substituted “section 7543” for “section 4543”.

2001—Subsec. (c)(1)(B). Pub. L. 107-107, § 343(a)(1), substituted “as provided in paragraph (3)” for “in any case of willful misconduct or gross negligence”.

Subsec. (c)(3). Pub. L. 107-107, § 343(a)(2), added par. (3).

2000—Pub. L. 106-398 renumbered section 2553 of this title as this section.

1999—Subsec. (c). Pub. L. 106-65, § 331(a)(2), designated existing provisions as par. (1), redesignated former pars. (1) to (6) as subpars. (A) to (F), respectively, of par. (1), and added par. (2).

Subsec. (g)(2), (3). Pub. L. 106-65, § 331(b), added par. (2) and redesignated former par. (2) as (3).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115-232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 103-337, div. A, title III, § 339(b), Oct. 5, 1994, 108 Stat. 2720, provided that: “Section 2553 [now 2563] of title 10, United States Code, as added by subsection (a), shall take effect on April 1, 1995.”

§ 2564. Provision of support for certain sporting events

(a) SECURITY AND SAFETY ASSISTANCE.—At the request of a Federal, State, or local government agency responsible for providing law enforcement services, security services, or safety services, the Secretary of Defense may authorize the commander of a military installation or other facility of the Department of Defense or the commander of a specified or unified combatant command to provide assistance for the World Cup Soccer Games, the Goodwill Games, the Olympics, and any other civilian sporting event in support of essential security and safety at such event, but only if the Attorney General certifies that such assistance is necessary to meet essential security and safety needs.

(b) OTHER ASSISTANCE.—The Secretary of Defense may authorize a commander referred to in subsection (a) to provide assistance for a sporting event referred to in that subsection in support of other needs relating to such event, but only—

(1) to the extent that such needs cannot reasonably be met by a source other than the Department;

(2) to the extent that the provision of such assistance does not adversely affect the military preparedness of the armed forces; and

(3) if the organization requesting such assistance agrees to reimburse the Department for

amounts expended by the Department in providing the assistance in accordance with the provisions of section 277 of this title and other applicable provisions of law.

(c) INAPPLICABILITY TO CERTAIN EVENTS.—Subsections (a) and (b) do not apply to the following sporting events:

(1) Sporting events for which funds have been appropriated before September 23, 1996.

(2) The Special Olympics.

(3) The Paralympics.

(4) A sporting event sanctioned by the United States Olympic Committee through the Paralympic Military Program.

(5) Any national or international paralympic sporting event (other than a sporting event described in paragraphs (1) through (4))—

(A) that—

(i) is held in the United States or any of its territories or commonwealths;

(ii) is governed by the International Paralympic Committee; and

(iii) is sanctioned by the United States Olympic Committee;

(B) for which participation exceeds 100 amateur athletes; and

(C) in which at least 10 percent of the athletes participating in the sporting event are members or former members of the armed forces who are participating in the sporting event based upon an injury or wound incurred in the line of duty in the armed force and veterans who are participating in the sporting event based upon a service-connected disability.

(d) TERMS AND CONDITIONS.—The Secretary of Defense may require such terms and conditions in connection with the provision of assistance under this section as the Secretary considers necessary and appropriate to protect the interests of the United States.

(e) RELATIONSHIP TO OTHER LAWS.—Assistance provided under this section shall be subject to the provisions of sections 275 and 276 of this title.

(f) FUNDING FOR SUPPORT OF CERTAIN EVENTS.—(1) Amounts for the provision of support for a sporting event described in paragraph (4) or (5) of subsection (c) may be derived from the Support for International Sporting Competitions, Defense account established by section 5802 of the Omnibus Consolidated Appropriations Act, 1997 (Public Law 104-208; 10 U.S.C. 2564 note), notwithstanding any limitation under that section relating to the availability of funds in such account for the provision of support for international sporting competitions.

(2) The total amount expended for any fiscal year to provide support for sporting events described in subsection (c)(5) may not exceed \$1,000,000.

(Added Pub. L. 104-201, div. A, title III, § 367(a), Sept. 23, 1996, 110 Stat. 2496, § 2554; amended Pub. L. 105-85, div. A, title X, § 1073(a)(56), (c)(2)(A), Nov. 18, 1997, 111 Stat. 1903, 1904; renumbered § 2564, Pub. L. 106-398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-260; Pub. L. 110-181, div. A, title III, § 372(a), Jan. 28, 2008, 122 Stat. 81; Pub. L. 115-91, div. A, title X, § 1051(a)(20), Dec. 12, 2017, 131 Stat. 1561.)